



# BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended;

AND IN THE MATTER OF the complaint by Patricia Musty dated July 21, 1995 and addendum dated November 27, 1995, alleging discrimination and harassment with respect to employment on the basis of sex and reprisal.

B E T W E E N :

Ontario Human Rights Commission

- and -

Patricia Musty

Complainant

- and -

Meridian Magnesium Products Limited  
Ed Waters, Paul Walker, Ron Doan and Willi Kammerer

Respondent

- and -

Attorney General for Ontario

Intervener

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## INTERIM DECISION

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Adjudicator : Mary Anne McKellar

Date : March 12, 1998

Board File No: BI-0140-97

Decision No : 98-005-I

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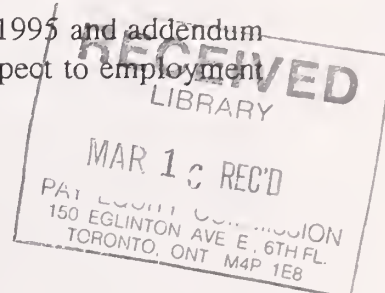
Board of Inquiry (*Human Rights Code*)

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## APPEARANCES

Ontario Human Rights Commission	)	
	)	Roger Palacio, Counsel
	)	
Patricia Musty, Complainant	)	
	)	Harry Kopyto, Legal Agent
	)	
Meridian Magnesium Products Limited,	)	
Corporate Respondent	)	
Ed Waters, Personal Respondent	)	
Paul Walker, Personal Respondent	)	Barbara Humphrey, Counsel
Ron Doan, Personal Respondent	)	
Willi Kammerer, Personal Respondent	)	
	)	
Attorney General for Ontario, Intervener	)	Jennifer August, Counsel
	)	

An Interim Decision in this matter issued on February 13, 1998. It deferred consideration of the Constitutional Question posed by the Complainant and directed the parties to write to the Board of Inquiry to identify "those issues with respect to the Original Complaint that remain outstanding and require adjudication by the Board". Upon review of the submissions received by the parties, it appears that some further case management of this file is desirable. The Deputy Registrar of the Tribunals' Office will be contacting you to schedule a conference call of approximately two hours duration to deal with:

**(1) The Complainant's request for reconsideration of the decision to defer contained in the Interim Decision.**

All parties should be prepared to address: whether the Board has jurisdiction to reconsider, having regard to sections 21.2 and 25.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and the Board's own Rules of Practice; whether grounds for reconsideration exist; and what the outcome of any reconsideration should be. The Attorney General for Ontario may participate in this aspect of the conference call.

**(2) The Complainant's request for an extension of time in which to indicate whether she will be making an Application to the Ontario Court (General Division) with respect to the Constitutional Question.**

The Interim Decision directed that the Complainant indicate to the Board and the other parties within thirty days of the release of the reasons in the Interim Decision (i.e. by March 15, 1998) whether she intended to pursue the Constitutional Question before the court. Given the fact of the reconsideration request, and in the absence of objection from the other parties, an extension until such time as the Board has had an opportunity to deal with the reconsideration request seems reasonable. The

Complainant has requested 60 days following “the completion of the interlocutory proceedings involving the amendment of the original complaint” in which to advise of any jurisdictional challenge she intends to make. The Complainant will be expected to clarify exactly what is meant by this request (i.e. 60 days after the hearing of the motion ends or after the decision issues). The other parties will be expected to advise the Board if they consent to that extension, and to the extent that they are able to do so, if any of them anticipate seeking a stay of any portion of these proceedings pending the outcome of any judicial challenge. The Attorney General for Ontario may participate in this aspect of the conference call.

**(3) The Complainant’s motion to amend the Original Complaint and the Respondents’ motion to confine the scope of evidence.**

The Complainant is in the midst of cross-examination with respect to her motion to amend the Original Complaint. The Respondents’ motion has not yet been heard. The parties should be prepared to schedule continuation dates in respect of these matters during the conference call.

**(4) Outstanding issues with respect to the Original Complaint.**

With respect to the Reprisal Complaint, the Board understands that two issues are to be adjudicated: whether a contravention of the *Code* occurred; and, if so, how it is to be remedied. Notwithstanding the direction in the Interim Decision, however, it is not entirely clear what issues the parties require the Board to adjudicate with respect to the Original Complaint. The Board appreciates that some of these issues may be more fully addressed in the course of the Respondents’ motion with respect to the scope of evidence, but it would nevertheless be helpful if the parties could advise the Board of their positions with respect to the following:

- a. Does the Employer concede a contravention of the *Code*? The Board’s understanding is that it does.

- b. Do the Complainant and Commission nevertheless propose to lead evidence to establish that a contravention has occurred?
- c. Setting aside for the moment any challenge to the *Code*'s \$10,000.00 cap on damages for mental anguish, do the Complainant and/or the Commission seek an amount of damages that is greater than what has been offered by the Respondents? If so, what is that amount?
- d. If the Respondents' monetary offer is not acceptable to the Complainant and the Commission, do they propose to lead evidence to establish the damages claimed? What, if any, effect does the Respondents' offer have on the Board's jurisdiction in such circumstances? Can the Board award less than the Respondent has offered, or does the Respondents' offer function as a "floor" below which the Board cannot go?
- e. Do the non-monetary remedies sought by the Complainant differ from those offered by the Respondents? The Board's understanding is that they do.
- f. Are the non-monetary remedies sought by the Complainant also sought by the Commission? Are they remedies that the Complainant may pursue, or do they go beyond redressing the impact on her of the Respondents' contravention of the *Code*?

#### **The Complainant's disclosure request.**

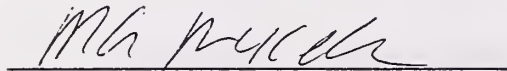
The Complainant has requested that I deal with its request for disclosure of the minutes of the Meridian Management Meeting of January, 1993. The Respondents oppose this request.

In proceedings before the Board of Inquiry, documentary disclosure will normally be ordered where the documents sought are arguably relevant to an issue in dispute and the documents are not privileged. Dealing with the first criterion, I understand the Respondents' position to be that the minutes requested are not relevant to "an issue in dispute", because there is no dispute as to the fact that the Respondents have contravened the *Code*: they have conceded as much. On the other hand, the Complainant in her submissions seems to indicate that she intends to lead evidence to seek to establish a contravention of the *Code*, and that the minutes are therefore relevant. Whether the minutes do in fact relate to an issue in dispute can only be assessed once a determination has been



made with respect to what issues are in dispute, that is, only after the preliminary motions referred to in Paragraph 3 above have been heard and determined. The disclosure request is premature at this time.

Dated at Toronto this 12th day of March 1998.

A handwritten signature in cursive script, appearing to read 'MA McKellar', is written over a horizontal line.

Mary Anne McKellar  
Member, Board of Inquiry